



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0062; FRL-9504-02-R4]

Air Plan Approval; NC; Great Smoky Mountains National Park, Raleigh-Durham-Chapel Hill and Rocky Mount Areas Limited Maintenance Plans for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve state implementation plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources, Division of Air Quality (NCDAQ), in a letter dated September 22, 2020. The SIP revisions include the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plans (LMPs) for the Great Smoky Mountains National Park (GSMNP), Raleigh-Durham-Chapel Hill (Triangle) and Rocky Mount, North Carolina Areas (collectively, “Areas”). EPA is finalizing approval of the LMPs for the Areas because each LMP provides for the maintenance of the 1997 8-hour ozone NAAQS within each of the Areas through the end of the second 10-year portion of the maintenance period. This action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Areas federally-enforceable as part of the North Carolina SIP.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0062. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9207. Ms. Myers can also be reached via electronic mail at myers.dianna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Clean Air Act (CAA or Act), EPA is approving the Areas' LMPs for the 1997 8-hour ozone NAAQS, adopted and submitted by NCDAQ as revisions to the North Carolina SIP on September 22, 2020. On April 15, 2004, EPA published a final rule designating the GSMNP, Triangle and Rocky Mount Areas nonattainment for the 1997 8-hour ozone NAAQS.¹ The GSMNP nonattainment area included portions of Haywood and Swain Counties. The Triangle nonattainment area included Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entirety and the Townships of Baldwin, Center, New Hope and Williams in Chatham County. The Rocky Mount nonattainment area included Edgecombe and Nash Counties in their entirety. Subsequently, EPA approved the maintenance plans for the

¹ See 69 FR 23857.

GSMNP, Triangle and Rocky Mount Areas and redesignated the Areas to attainment for the 1997 8-hour ozone NAAQS.²

The Areas' LMPs for the 1997 8-hour ozone NAAQS, submitted by NCDAQ on September 22, 2020, are designed to maintain the 1997 8-hour ozone NAAQS within the GSMNP, Triangle and Rocky Mount Areas through the end of the second 10-year portion of the maintenance period beyond redesignation. As a general matter, the Areas' LMPs rely on the same control measures and relevant contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by NCDAQ for the first 10-year period.

In a notice of proposed rulemaking (NPRM), published on February 11, 2022 (87 FR 7970), EPA proposed to approve the Areas' LMPs because the State made a showing, consistent with EPA's prior LMP guidance, that the GSMNP, Triangle and Rocky Mount 1997 8-hour NAAQS Areas' ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it met the other maintenance plan requirements. The details of North Carolina's submission and the rationale for EPA's action are explained further in the February 11, 2022, NPRM. Comments on the February 11, 2022, NPRM were due on or before March 14, 2022.

II. Response to Comments

One Commenter provided two separate comments on the February 11, 2022, NPRM. EPA's responses to those comments are provided below.

Comment 1: The Commenter indicates that North Carolina's SIP submissions and EPA's proposed approval are reliant on emissions from North Carolina's vehicle inspection and maintenance (I/M) program. Specifically, the Commenter expresses concerns about the effectiveness of the I/M program, citing expired tags, which the Commenter asserts indicate lapsed inspections and taxes to support highway safety measures.

² See 74 FR 63995 (December 7, 2009), 72 FR 72948 (December 26, 2007), and 71 FR 64891 (November 6, 2006).

Response 1: Neither of the maintenance plans for GSMNP and Rocky Mount are reliant on emission reductions from North Carolina's I/M program, so the comment is not applicable to this action as it relates to those areas. No county in the GSMNP and Rocky Mount Areas is subject to the North Carolina I/M program, and in a previous action, EPA approved a SIP revision which removed the applicable counties in the GSMNP and Rocky Mount Areas from North Carolina's I/M program on the basis that the emissions reductions from the program in these counties were not necessary to attain or maintain the NAAQS or meet any other applicable requirement of the CAA.³ *See* 83 FR 48383 (September 25, 2018).

With regards to the Triangle Area, the maintenance plan is partially reliant on emission reductions from North Carolina's I/M program. As mentioned above, the Triangle Area includes Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entirety and the Townships of Baldwin, Center, New Hope and Williams in Chatham County. Person County was never subject to North Carolina's I/M program, and thus, no emissions reductions from Person County related to North Carolina's I/M program were ever relied on in North Carolina's maintenance plan for the Triangle. Additionally, in the aforementioned September 25, 2018 action, EPA approved a SIP revision removing Chatham, Granville and Orange Counties in the Triangle Area from North Carolina's I/M program, finding that emission reductions from North Carolina's I/M programs were not needed from Chatham (which includes the Townships of Baldwin, Center, New Hope, and Williams), Granville and Orange Counties in the Triangle Area for that Area to stay in attainment and show continued maintenance for the NAAQS. *See* 83 FR 48383. Durham, Franklin, Johnston and Wake Counties are still subject to North Carolina's I/M program, and in a recent action, EPA approved a SIP revision from North Carolina to change the model year coverage for vehicles subject to North Carolina's I/M program. *See* 84 FR 47889 (September 11, 2019). In that action, EPA affirmed that the change to the model year coverage

³ Swain County in the GSMNP area was never subject to North Carolina's I/M program.

for vehicles in the applicable counties in the Triangle Area would not interfere with NAAQS compliance.

While EPA appreciates the Commenter's concerns related to possible expired tags, this is an enforcement and compliance issue, and expired tags alone are not indicative of the Triangle Area not being in overall compliance with the NAAQS. Ambient air monitoring is the tool that EPA uses to determine ongoing compliance with the NAAQS in this Area. Currently, the Triangle Area is in compliance for all NAAQS, and has been in compliance with all NAAQS for the past several years. EPA also notes that EPA's SIP authority does not extend to requiring taxes to support highway safety measures, so this concern is not relevant to EPA's action.

Comment 2: The Commenter appears to indicate that monitors in Wake County are not sited correctly to measure ambient air quality in the County, and therefore, do not provide adequate data to support EPA's action. Specifically, the Commenter questions the placement of the monitors, the sufficiency of the data that is collected, and the methods used to collect the data. In support of these assertions, the Commenter compares the Town of Fuquay Varina, metropolitan downtown Raleigh, and Durham ("the State Capital"). The Commenter also asserts that projects may have been "intentionally steered clear" of monitors "to provide an unrealistic picture of Wake County air degradation."

Response 2: EPA disagrees with the Commenter's assertion that the monitors in Wake County are not sited appropriately to collect sufficient data to determine compliance with the NAAQS and support EPA's action. By regulation, states are required annually to submit monitoring network plans to provide their strategies for measuring ambient air quality statewide. EPA reviews these air monitoring network plans and makes determinations as to whether the plans are consistent with EPA's monitoring requirements at 40 CFR part 58. EPA last approved North Carolina's monitoring network plan on October 27, 2021, and made the determination (among other determinations) that North Carolina's monitoring network is adequate to measure

ambient air quality for ozone statewide, including in Wake County.⁴ As discussed in the NPRM, the LMPs for the Areas contain the State’s commitment to continue to maintain a monitoring network in accordance with EPA requirements.

Further, EPA is not clear on the Commenter’s assertion that projects may have been “intentionally steered clear” of monitors “to provide an unrealistic picture of Wake County air degradation,” and how this relates to air quality in the County. Notably, ozone is not directly emitted but instead is formed in the atmosphere under certain conditions with a mix of precursors, so it would not be possible for projects to be “intentionally steered clear” of ozone monitors to hypothetically manipulate air quality in the Area. In addition, the Commenter does not provide any technical information to support the assertions that ambient air quality monitoring in Wake County is not adequate.

III. Final Action

EPA is taking final action to approve the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS, submitted by NCDAQ on September 22, 2020, as revisions to the North Carolina SIP. EPA is approving the Areas’ LMPs because each LMP includes an sufficient update of various elements of the 1997 8-hour ozone NAAQS Maintenance Plans approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP under sections 110(k) and 175A of the CAA.

EPA also finds that the Areas qualify for the LMP option and that the Areas’ LMPs are sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Areas over the second 10-year maintenance period (*i.e.*, through January 6, 2030 for the GSMNP Area, through January 5, 2027, for the Rocky Mount Area, and through December 26, 2027, for the Triangle Area).

IV. Statutory and Executive Order Reviews

⁴ EPA’s approval letter for North Carolina’s monitoring network is included in the docket for this final rulemaking.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

These SIP revisions are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce their requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II – North Carolina

2. In § 52.1770(e), amend the table by adding an entry for “1997 8-hour Ozone NAAQS 2nd Maintenance Plans (Limited Maintenance Plans) for the Great Smoky Mountains National Park, Raleigh-Durham-Chapel Hill, and Rocky Mount, North Carolina Areas” at the end of the table to read as follows:

§52.1770 Identification of plan.

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EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
1997 8-hour Ozone NAAQS 2nd Maintenance Plans (Limited Maintenance Plans) for the Great Smoky Mountains National Park, Raleigh-Durham-Chapel Hill, and Rocky Mount, North Carolina Areas	9/22/2020	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	